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	THE DIA DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
APPLICATION NO.	FILING DATE		1737	6638
09/933,092	08/20/2001	Juergen Sauler		
-	son 09/14/2004		EXAMINER	
-	rriker & Stenby		HOANG, J	OHNNY H
103 East Neck	Road		ART UNIT	PAPER NUMBER
Huntington, NY 11743			3747	
			DATE MAILED: 09/14/200	14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Act Unit   Examiner		Application No.	Applicant(s)	1 1
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Listeritors of time may be available under the provisions of 3 CRR 1, 136(s), in no event, however, may a may be beinney lind safe SIX (s) MONTH's from the amorting date of this may be available under the provision of 3 CRR 1, 136(s), in no event, however, may a may be beinney lind safe SIX (s) MONTH's from the amorting date of this communication.  It is provided from the provision of the second safe that the provision of the provision of the second provision of the second provision of the second provision.  I shall be replicated from the second safe that the mailing date of this communication, even if threely filled, may reduce any second provision than object the second provision of the second provision o			SAULER ET AL.	V
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This action is FINAL.   2b	THE MAILING DATE OF THIS COMMUNICATION  - Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a result if NO period for reply is specified above, the maximum statutory perion if NO period for reply within the set or extended period for reply will, by state that the period is the provision of the period for reply will be set or extended period for reply will, by state that the period for reply will be set or extended period for reply will be set or exte	1.136(a). In no event, however, reply within the statutory minimul od will apply an are liketica to be	may a reply be timely filed  m of thirty (30) days will be considered tim (6) MONTHS from the mailing date of this come ARANDONED (35 U.S.C. § 133).	nely. s communication.
2a)  This action is FINAL. 2b) This action is non-tinat.  3  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 17-27 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5)  Claim(s) is/are allowed. 6)  Claim(s) 17-27 is/are rejected. 7)  Claim(s) is/are objected to. 8)  Claim(s) are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner. 10)  The drawing(s) filed on August 20, 2001 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) Certified copies of the priority documents have been received. 2 Certified copies of the priority documents have been received in Application No. application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  1) Notice of Dratsperson's Palent Drawing Review (PTO-948) a) Notice of Dratsperson's Palent Drawing Payer (PTO-948) b) Notice of Dratsperson's Palent Drawing Payer	Status			
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	3) Information Disclosure Statement(s) (PTO-1449 or PTO Paper No(s)/Mail Date	/SB/U01		

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## **DETAILED ACTION**

## Claim Objections

1. Claim 23 is objected to because of the following informalities:

In claim 23, line 1; "according to claim 227" must be changed to —according to claim 17 or 22--. Appropriate correction is required.

## **Double Patenting**

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 17-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,727,812 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed and covered by the scope of the patented claims. Such broader claims in the instant application are said to "dominate" the more narrow claims in the Patents, which contain additional elements.

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Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Johnny H. Hoang whose telephone number is (703) 308-2782. The

examiner can normally be reached on Monday - Thursday (7:00Am-5: 30Pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Henry Yuen can be reached on (703) 308-1946. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JHH September 13, 2004 Johnny H. Hoang Examiner Art Unit 3747

Wallis R. Wolfe
Primary Examiner

Art Unit 8747